

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C.416

BILL NUMBER: S-1905

DATE OF
INTRODUCTION: Dec. 4, 2000

SPONSOR: Senator Ciesla

DATE OF
RECOMMENDATION: Feb. 22, 2001

IDENTICAL BILL: A-3005

COMMITTEE: Senate Community & Urban Affairs

DESCRIPTION:

The bill would provide a sales and use tax exemption for certain sales to nonprofit homeowners' associations of energy and of certain services which they are required to provide for the common areas of a real estate community.

ANALYSIS:

Nonprofit homeowners' associations are required to provide certain services for the common areas of a housing community, and are entitled to reimbursement from the municipality when they purchase these services. The bill would allow these associations an exemption when purchasing services that would qualify for such reimbursement by the municipality under N.J.S.A. 40:67-23.3. These reimbursable services (e.g., snow removal, road lighting, garbage and recyclables collection) are reimbursable only if performed upon an area which is dedicated to public use or which at least satisfies the municipality's criteria for such dedication, and only to the extent that the expense does not exceed what the municipality would have had to spend if the service had been provided directly to the municipality. The apparent rationale for this proposed exemption is one which the Commission essentially supports. That is, if these services were not provided by the association, they would need to be provided by the municipality, at the public's expense, and the municipality would be exempt from sales and use tax on its purchases. As a matter of general policy, the Commission supports the position that the association should be exempt when purchasing taxable services that will ultimately be paid for by an exempt public entity and that would have been exempt if purchased directly by the municipality.

This rationale, however, does not support an exemption for purchases of energy, since municipalities are not exempt from sales and use tax on the purchase of energy. See N.J.S.A. 54:32B-9(c)(2). Thus, as currently written, the bill presented to us for review would give homeowners' associations greater exemption rights than exempt organizations and state and local governments in the area of energy purchases; only the federal government (along with its agencies and instrumentalities) is exempt from sales tax on energy.

While the Commission supports the policy underlying the proposed exemption, its support of the bill is based on an assumption that the language of the bill will be amended to delete the exemption for receipts from the sale or use of "energy".

There are some concerns that an exemption at the point of sale would be subject to misapplication and abuse. The exemption clearly is intended to apply only to those expenses that are reimbursable under N.J.S.A. 40:67-23.3. Reimbursable expenses are limited to those incurred in the purchase of certain essential services and *only* when those expenses are incurred in servicing areas which the municipality deems to be dedicated to public use, and the expenses do not exceed the amounts that the municipality would have had to spend if providing the service directly. But, until the municipality reviews the Association's purchases to determine the amounts eligible for reimbursable, it may not be entirely clear whether the Association's purchase should be exempt in whole or in part. It would therefore be preferable to grant the exemption in the form of a right to a refund rather than an exemption at the point of sale.

RECOMMENDATION: Conditional support

COMMISSION MEMBERS FOR PROPOSAL: 6

COMMISSION MEMBERS AGAINST PROPOSAL: 0

COMMISSION MEMBERS ABSTAINING: 1

COMMISSION MEETING DATE: February 14, 2001